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Media Assets May Be Forfeit Under Spy Bill

Lawmakers' Effort to Bar Profits in Espionage Cases Could Have a Hidden Side Effect

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The Senate has passed a bill that apparently would require the government to seize the assets of newspapers or other news organizations that might be convicted under the espionage law recently invoked by CIA Director William J. Casey.

The penalty, which may have been unintended, is contained in a measure approved June 25 to prevent convicted spies such as John A. Walker Jr. from keeping the proceeds of their activities or selling their stories for profit.

The bill, sponsored by Sen. Ted Stevens (R-Alaska), attracted more than 40 cosponsors and was added by voice vote to the Diplomatic Security and Antiterrorism Act without discussion of potential side effects.

Critics say the measure would apply to felony convictions under any section of the espionage statute and not just the language (Section 794) prohibiting the delivery of national defense secrets to a foreign government.

Stevens introduced his bill last September amid the furor over the activities of the Walker family and other espionage cases that earned 1985 the title "Year of the Spy."

In recent months, however, Casey has issued warnings concerning news stories and broadcasts dealing with communications intelligence activities and intercepted foreign communications.

As part of these warnings, the CIA chief has threatened news organizations with prosecution under Section 798, the "Comint" statute enacted by Congress in 1950 to protect code-breaking operations. The statute, which has never been used against news organizations, prohibits "knowingly and willfully" disclosing or publishing classified information "concerning the communications intelligence activities of the United States or any foreign government."

The Stevens bill provides that "any person convicted" under any section of the espionage statute "shall forfeit to the United States . . . any of the person's property used . . . in any manner or part . . . to commit, or to facilitate the commission of such violation."

Allan Adler, legislative counsel for the American Civil Liberties Union, said, "If Casey is correct in saying that under Section 798, the government could proceed directly against The Washington Post, then the property of The Post, if it were a named defendant, would be forfeited to the government."

Under the Stevens bill, forfeiture of "all property" used in the commission of the offense would be automatic. The judge would have no discretion. The measure states:

"The Court, in imposing sentence on a defendant for a conviction . . . of any . . . felony in violation of this chapter, shall order that the defendant forfeit all property" used to commit the violation.

Presumably, this would include printing presses in the case of a newspaper or broadcasting facilities in the case of a television network.

"Coupled with Casey's threats to prosecute the press, this provision is frightening," said Rep. Don Edwards (D-Calif.), chairman of the House Judiciary subcommittee on constitutional rights. "Communications intelligence today means much of our intelligence product. If this provision is enacted, the media can publish stories on intelligence matters only at the risk of their businesses. Obviously it will have a chilling effect."

Stevens was in Alaska, according to his office, and could not be reached for comment.

The House has passed its version of antiterrorism legislation, and the differences are awaiting resolution by a House-Senate conference committee.

Senate staffers have wryly dubbed the Stevens measure the "You Spy, You Die" bill. It has a broadly bipartisan group of cosponsors, including Sens. David F. Durenberger (R-Minn.) and Patrick J. Leahy (D-Vt.), chairman and vice chairman respectively of the Senate Select Committee on Intelligence, Jeremiah Denton (R-Ala.), Strom Thurmond (R-S.C.), Dale Bumpers (D-Ark.) and Albert Gore Jr. (D-Tenn.).

The bill has been depicted mainly as an extension of "Son of Sam" laws adopted on state and federal levels after David Berkowitz, a convicted New York murderer who called himself "Son of Sam," sold his story for profit.

These laws cover only crimes involving physical harm, but Stevens argued in floor debate June 25 that it was time to make people "think twice about entering into the career of spying for profit." The bill would also set up a reward fund for information leading to the arrest and conviction of espionage suspects.

Sen. Charles McC. Mathias Jr. (R-Md.) said he was concerned about the First Amendment aspects of the Son of Sam rule, but was assured by Stevens that it was not intended to prevent third parties from writing books or articles about espionage cases.

In the Walker case, for instance, Washington Post staff writer Pete Earley has signed a contract with Bantam Books to write about the Walker family. He said the contract guarantees him complete editorial independence and that he has asked for a leave of absence to write the book. But he said that, on the advice of Bantam officials, he could make no further comment or say whether any financial arrangements have been made with the Walkers.

Under the "Son of Sam" rule in the Stevens bill, any money paid to John Walker or his "transferee" could be ordered confiscated by a federal judge at posttrial proceedings.

The automatic forfeiture provision of the Stevens bill, by contrast, is a separate rule to be invoked at sentencing. Stevens has said it was patterned after provisions in drug laws that are meant to put drug dealers out of business.

"The purpose of forfeiture is to make it an additional punishment, apart from the prison sentence and the fine," said the ACLU's Adler. "The purpose is to end the individual's enterprise, or in the case of the press, to end the ability to engage in the enterprise that constitutes the offense. In Casey's view, the act of publishing the story is the offense."

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